

Prepared by SZ Rosenthal, Atty. Return after recording to City of Durham, David Fleischer, Gen. Svcs, Real Estate Div., 101 City Hall Plaza, Durham, NC 27701.

**STATE OF NORTH CAROLINA
COUNTY OF DURHAM**

EASEMENTS DEED AND AGREEMENT

THIS EASEMENTS DEED AND AGREEMENT (the "Agreement") is made and entered into this ____ day of _____, 2012 by and between the CITY OF DURHAM, a North Carolina municipal corporation (the "City") and DIAMOND VIEW III, LLC, a North Carolina limited liability company ("DV III").

RECITALS:

A. The City is the owner of fee simple title to that certain parcel of land located in Durham, North Carolina and described on Exhibit A attached hereto and made a part hereof (the "City Property"). The Durham Bulls Athletic Park (the "DBAP"), home of the Durham Bulls minor league baseball team, is located on the City Property.

B. DV III is the owner of fee simple title to that certain parcel of land located in Durham, North Carolina and described on Exhibit B attached hereto and made a part hereof (the "DV III Property"). The DV III Property is adjacent to the City Property.

C. By Deed of even date herewith, the City transferred to DV III a portion of the City Property, which portion is more particularly described on Exhibit C attached hereto and made a part hereof (the "Transferred Property"). A portion of this Transferred Property shall remain functionally a part of the DBAP.

D. In connection with the transfer of the Transferred Property to DV III, the City shall provide DV III with temporary easements and rights necessary to construct perimeter fencing and gates to replace the perimeter fencing and gates for the DBAP that DV III desires to move and re-design. In addition, the City shall provide a temporary construction easement to DV III to construct a pathway, including ramps, from the City Property to Blackwell Street, which pathway shall be designed and constructed in accordance with the specifications contained herein to bear repair and maintenance equipment and supplies for City Property, as well as provide needed access for solid waste removal (the "Hardened Pathway"). In connection with its redevelopment of the DV III Property and the construction of a multi-story office building thereon, and in consideration for the grant of the Transferred Property by the City, DV III provides the City with the easements and rights and takes on the obligations described herein.

AGREEMENT:

NOW, THEREFORE, in consideration of the recitals, covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, DV III and City do hereby agree as follows:

Section 1. Easements benefiting City Property; DV III Construction Obligations. (a) Subject to all matters of record that affect the DV III Property, DV III does hereby grant, bargain, sell and convey to City and its successors and assigns: (i) a permanent, nonexclusive easement, from, under, across, upon and through that portion of the DV III Property labeled "Access Easement" on Exhibit D attached hereto, as is reasonably necessary to provide pedestrian ingress, egress and regress to and from the DBAP as necessary to attend events at DBAP, it being acknowledged and agreed that such ingress, egress and regress rights are only granted to the City during (and a reasonable period of time before and after) the occurrence of events at the DBAP; and (ii) a permanent, nonexclusive easement, from, under, across, upon and through the portion of the DV III Property labeled "General Easement Area" on Exhibit D attached hereto, which General Easement Area the City and its tenants, agents and assigns shall have the right to use for any purpose allowed by law; TO HAVE AND TO HOLD, the aforesaid easements, and all rights and privileges thereto appertaining, unto City, and its successors and assigns, forever. The fence which DV III shall construct along the southwestern property line of the DV III Property (the "Decorative Fence") is labeled "New Decorative Fence (To Match Existing)" on Exhibit E attached hereto. Following construction of the DV III Office Building (defined below), the City shall be solely responsible for maintaining, repairing and replacing all improvements located within the General Easement Area except for the Decorative Fence. The City shall not construct, place or otherwise allow any improvements to be erected on the General Easement Area that have a height greater than twelve (12) feet above the finished elevations of the General Easement Area, and as the finished elevations vary, so shall such twelve (12) foot limitation.

(b) DV III shall construct an office building on the DV III Property (the "DV III Office Building") and in connection with such construction, DV III shall construct a Hardened Pathway, replace existing fence and gate sections and construct the Decorative Fence, extend a retaining wall, install various swing gates, and construct and install related equipment and facilities near the northern boundary of the City Property, as shown on Exhibit F attached hereto and made a part hereof (collectively, the "Replacement Improvements"). With regard to the Replacement Improvements, DV III covenants that it shall: (i) perform all such work at its sole cost and expense, in accordance with all applicable laws, in a good and workmanlike manner and in a manner that is reasonably acceptable to the City, including that the Hardened Pathway shall have sufficient load bearing capacity to bear without damage equipment, vehicles and supplies needed for operation, maintenance and repair of the DBAP or any other uses on the City Property; (ii) perform and complete all such work free of all mechanics' and materialmen's liens; and (iii) complete all such work within twenty-four (24) months of execution of this Agreement. DV III shall be considered to have fulfilled its obligations with regard to the quality of construction of the Hardened Pathway by constructing (or causing to be constructed) the Hardened Pathway in substantial compliance with the following specifications: six (6.0) inches of reinforced concrete over six (6.0) inches of compacted ABC stone over a well prepared and compacted subgrade; any plastic clay soil or existing fill soil encountered in the subgrade should be undercut and replaced with suitable soil compacted to ninety-eight per cent (98%) of the standard proctor density; and expansion joints should be provided to minimize uncontrolled shrinkage cracks. The Hardened Pathway and access gates and ramps that are associated with it shall all be a minimum width of ten (10) foot, without hinges or other impediments narrowing that clear width.

Section 2. Costs borne by DV III; Standard of Design and Construction; Maintenance of Fence and Gates. (a) DV III shall repair, and be solely responsible for the cost of any such repairs, any damage to any improvements that are a part of the City Property arising from or caused by DV III or its contractors and

agents in connection with the construction, use, maintenance or repair of the Replacement Improvements, DV III Office Building or related improvements.

(b) All improvements or repairs made by DV III pursuant to this Agreement shall be consistent with the design and standards of construction of the City Property and the DV III Office Building, as existing at the time such improvements or repairs are made.

(c) Following completion of the Replacement Improvements, the City shall be solely responsible, at its sole cost and expense, for maintaining, repairing and replacing those improvements located on City Property and within the General Easement Area, except for the Decorative Fence. DV III shall be solely responsible for maintaining, repairing and replacing the Decorative Fence and the DV III Office Building.

Section 3. Temporary Easement benefiting DV III Property. Subject to all matters of record that are validly existing and that affect the City Property, the City does hereby grant, bargain, sell and convey to DV III and its successors and assigns a temporary construction easement from, under, across and through the City Property as is reasonably necessary for the construction of the DV III Office Building and related improvements, including the plaza, fence, footings and the Replacement Improvements, such temporary easement area being labeled "Temporary Construction Work Zone Area" on Exhibit F. DV III its contractors and agents shall use all reasonable efforts when entering the City Property to minimize any interference with the use of the City Property by the City, its tenants or assigns. DV III shall be responsible to repair or replace, at its cost and expense, any damage to any of the improvements located on the City Property resulting from the entry by DV III or its contractors on the City Property or as a result of the exercise by DV III of its rights pursuant to this Agreement. This temporary easement shall be for a term of 24 months from the date of this Agreement, and at the end of that time shall automatically extinguish unless extended by the City.

Section 4. Binding Effect. The easements granted herein shall be appurtenant to, binding upon and shall run with, the DV III Property and the City Property and shall be binding upon the City and DV III and their respective successors and assigns. Whenever an obligation is imposed upon a party by this Agreement, it shall also bind the successors, assigns and majority-owned affiliate entities of that party.

Section 5. Indemnification. (a) To the maximum extent allowed by law, DV III shall defend, indemnify, and save harmless Indemnitees from and against all Charges that arise in any manner from, in connection with, or out of this Agreement as a result of acts or omissions of DV III, subcontractors, or anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable. In performing its duties under this subsection "a," the DV III shall at its sole expense defend Indemnitees with legal counsel reasonably acceptable to City. (b) Definitions. As used in subsections "a" above and "c" below -- "Charges" means claims, judgments, costs, damages, losses, demands, liabilities, duties, obligations, fines, penalties, royalties, settlements, and expenses (included without limitation within "Charges" are (1) interest and reasonable attorneys' fees assessed as part of any such item, and (2) amounts for alleged violations of sedimentation pollution, erosion control, pollution, or other environmental laws, regulations, ordinances, rules, or orders -- including but not limited to any such alleged violation that arises out of the handling, transportation, deposit, or delivery of the items that are the subject of this contract). "Indemnitees" means City and its officers, officials, independent contractors, agents, and employees, excluding DV III. (c) Other Provisions Separate. Nothing in this section shall affect any warranties in favor of the City that are otherwise provided in or arise out of this Agreement. This section is in addition to and shall be construed separately from any other indemnification provisions that may be in this Agreement. (d) Survival. This section shall remain in

force despite termination of this Agreement. (e) Limitations of DV III's Obligation. If this section is in, or is in connection with, a contract relative to the design, planning, construction, alteration, repair or maintenance of a building, structure, highway, road, appurtenance or appliance, including moving, demolition and excavating connected therewith, then subsection "a" above shall not require DV III to indemnify or hold harmless Indemnitees against liability for damages arising out of bodily injury to persons or damage to property proximately caused by or resulting from the negligence, in whole or in part, of Indemnitees.

Section 6. Performance of Work by City. If DV III fails to perform the obligations in accordance with this Agreement and applicable laws after 30 days' written notice from City, the City may, in its discretion, perform or cause to be performed some or all of the work, and doing so shall not waive any of the City's rights and remedies. The Contractor shall reimburse the City for additional costs incurred by the City in exercising its right to perform or cause to be performed some or all of the work pursuant to this section. Notwithstanding the foregoing, the City shall have no right to construct or do work on the DV III Office Building, except the columns.

Section 7. Reservation of Governmental Powers; Exclusive forum; Minimum Interference; Miscellaneous. (a) Nothing contained in this instrument shall be deemed or construed so as to in any way estop, limit, or impair the City from exercising or performing any regulatory, policing, legislative, governmental, or other powers or functions. This instrument shall not be grounds for any claim that the City has issued or will issue any permits or approvals of any kind, including with respect to development regulations and site plans. This instrument shall not be grounds for any claim against the City by any persons, firm, or corporation arising out of any act by the City done in the exercise or performance of any such powers or functions.

(b) The exclusive forum and venue for all actions arising out of this instrument shall be the North Carolina General Court of Justice, in Durham County. Such actions shall neither be commenced in nor removed to federal court. The preceding two sentences shall not apply to subsequent actions to enforce a judgment entered in the North Carolina General Court of Justice for Durham County.

(c) Except to the extent this instrument imposes a greater duty, it is agreed that, in fulfilling obligations and exercising rights under this instrument, each party shall use all reasonable efforts in good faith to keep interference with the property and operations of the other party to a minimum. To that end, except to the extent this instrument imposes a greater duty, it is agreed that each party will give to the other reasonable advance notice of any work which may interfere with the property or operations of the other, and will make reasonable attempts to arrange with the other for reasonable and definite times and conditions at and under which such work shall be performed.

(d) Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid, but if the application of any provision of this Agreement to any person, entity or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision that can be given without the invalid provision or application, and to this end the provisions of this Agreement are declared to be severable.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, under seal, by authority duly given, as of the date first written above.

DIAMOND VIEW III, LLC,
a North Carolina limited liability company

By: CBC Real Estate Company, Inc.,
a North Carolina corporation,
its Manager

By: _____
Michael J. Goodman, Sr., Vice President

ATTEST:

CITY OF DURHAM,
a North Carolina municipal corporation

City Clerk

By: _____
Thomas J. Bonfield, City Manager

[Remainder of page intentionally left blank.]

STATE OF NORTH CAROLINA
COUNTY OF _____

I, _____, a Notary Public of _____ County and State of North Carolina, do hereby certify that Michael J. Goodman, Sr. ("Signatory"), Vice President of Capitol Broadcasting Company, Incorporated, a North Carolina corporation, Manager of **Diamond View III, LLC**, a North Carolina limited liability company (the "Company"), personally appeared before me this day and by authority duly given, acknowledged the due execution of the foregoing instrument on behalf of the Company.

I certify that the Signatory personally appeared before me this day, and
(check one of the following)

(I have personal knowledge of the identity of the Signatory); or
(I have seen satisfactory evidence of the Signatory's identity, by a current
state or federal identification with the Signatory's photograph in the form of:
(check one of the following)
a driver's license or
in the form of _____); or
a credible witness has sworn to the identity of the Signatory).

The Signatory acknowledged to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated.

Witness my hand and official stamp or seal this _____ day of _____, 2012.

Notary Public

Print Name: _____

(Note: Notary Public must sign exactly as on notary seal)

My Commission Expires: _____

[NOTARY SEAL]

COUNTY OF DURHAM
STATE OF NORTH CAROLINA

ACKNOWLEDGMENT BY CITY OF DURHAM

Easements Deed and Agreement between the City of Durham and DV III, LLC

I, _____, a notary public, certify:

(1) _____, the City Clerk or a Deputy City Clerk, personally appeared before me in Durham County, N. C. on this day; (2) I have personal knowledge of her identity; and (3) she acknowledged that by authority duly given and as the act of the City of Durham, the foregoing document was signed in its corporate name by its _____ City Manager, sealed with its corporate seal, and attested by its said City Clerk or Deputy City Clerk.

This the _____ day of _____, 2012.

My commission expires: _____

Notary Public

Attachments:

- Exhibit A - Description of City Property
- Exhibit B - Description of DV III Property
- Exhibit C - Description of Transferred Property
- Exhibit D - Access Easement and DV III Easement Area
- Exhibit E - Decorative Fence
- Exhibit F - City Property Improvements

EXHIBIT A

City Property – Legal Description

Lying and being located in the City of Durham, Durham County, North Carolina and more particularly described as follows:

BEING all of Lot 1, as shown on survey made by Jeffrey P. Williams, NCPLS L-4204, entitled “Final Plat – Property of City of Durham, Subdivision, Recombination and Blackwell St. and Vivian St. Right of Way Dedication of American Tobacco Campus Phase III”, dated September 27, 2006, last revised January 22, 2007, and recorded in Plat Book 176, Pages 73, 76 and 79, of the Durham County Public Registry.

EXHIBIT B

DV III Property – Legal Description

Lying and being located in the City of Durham, Durham County, North Carolina and more particularly described as follows:

BEING all of Lot 2, as shown on survey made by Jeffrey P. Williams, NCPLS L-4204, entitled "Final Plat – Property of City of Durham, Subdivision, Recombination and Blackwell St. and Vivian St. Right of Way Dedication of American Tobacco Campus Phase III", dated September 27, 2006, last revised January 22, 2007, and recorded in Plat Book 176, Pages 73, 76 and 79, of the Durham County Public Registry.

EXHIBIT C

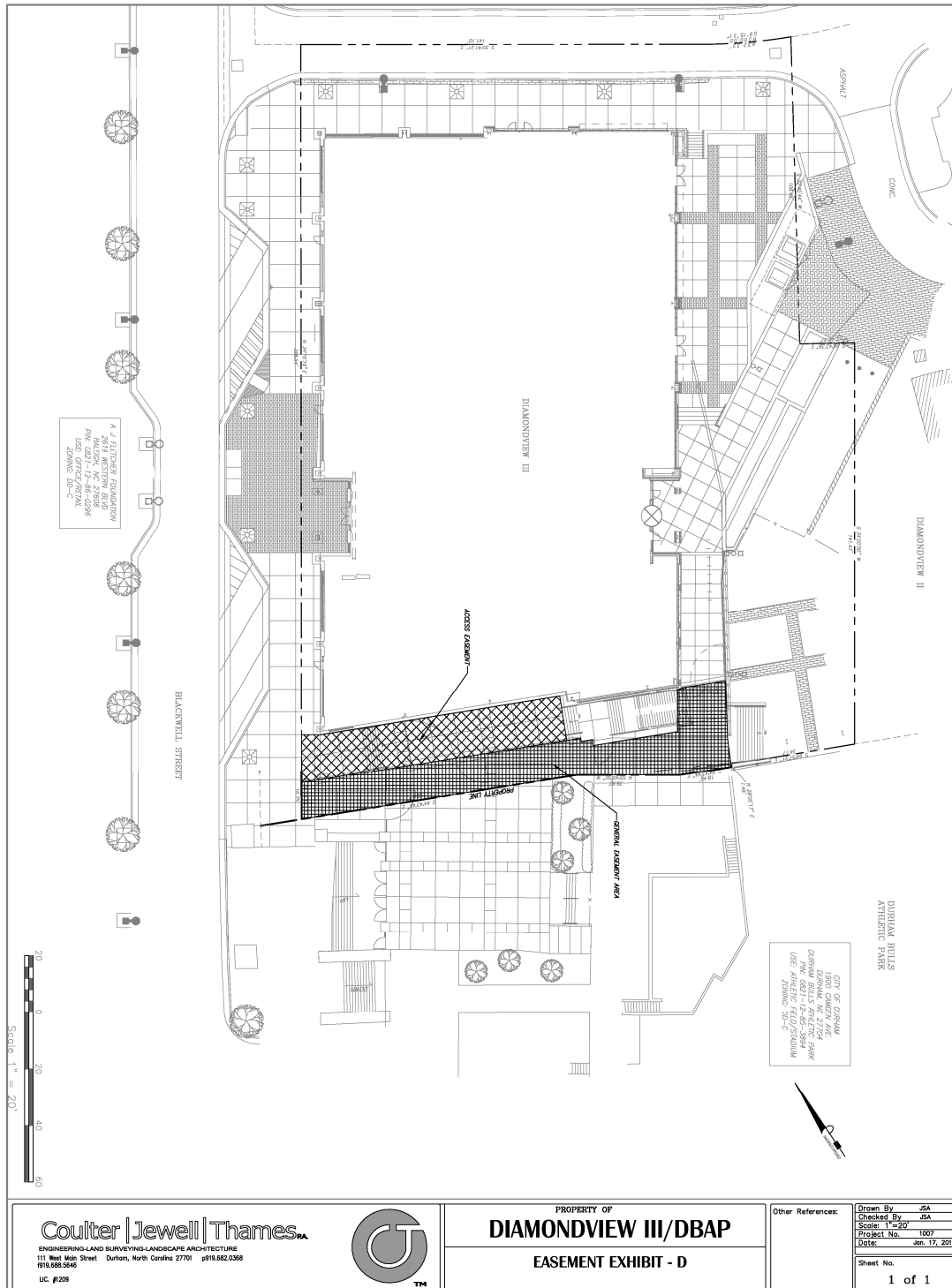
Transferred Property – Legal Description

Lying and being located in the City of Durham, Durham County, North Carolina and more particularly described as follows:

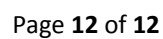
Commencing at a point on the eastern right of way of Blackwell Street; thence S 55°34'06" E a distance of 14.82' to an existing PK Nail, said PK Nail being the Point and Place of beginning; thence leaving the Blackwell Street Right of Way S 55°22'16" E a distance of 16.70' to a point; thence S 55°40'50" E a distance of 106.20' to a point; thence S 61°54'43" E a distance of 29.05' to a point; thence S 28°05'17" W a distance of 1.46' to a point; thence N 64°43'44" W a distance of 18.46' to a point; thence N 55°40'50" W a distance of 36.62' to a point; thence N 64°43'44" W a distance of 98.29' to a point; thence N 34°16'16" E a distance of 16.75' to a point, said point being the Point and Place of beginning, having an area of 952.73 square feet or 0.022 acres.

EXHIBIT D

Access Easement and DV III Easement Area



Decorative Fence



City Property Improvements

